IN THE COURT OF APPEALS OF IOWA

No. 3-098 / 92-1718

FILED
MAR 30 1993
CLERK SUPREME COURT

IN THE INTEREST OF J.O., A Minor Child,

D.O., Mother,
Appellant,

R.O., Father,
Appellant.

Appeal from the Iowa District Court for Cerro Gordo County, Gerald W. Magee, Associate Juvenile Court Judge.

The parents appeal a juvenile court decision terminating their parental rights pursuant to Iowa Code section 232.116(1)(e) (1991). **AFFIRMED.**

Charles H. Biebesheimer of Nelsen Law Office, Mason City, for appellant mother.

Phillip J. Stone of Stillman, Goranson, Stone & Lovell, Clear Lake, for appellant father.

Bonnie J. Campbell, Attorney General, John M. Parmeter, Special Assistant Attorney General, Judy Sheirbon, Assistant Attorney General, and Gregg Rosenbladt, Assistant County Attorney, for appellee State.

Heard by Oxberger, C.J. and Donielson and Hayden, JJ.

OXBERGER, C.J. 212

J.O.'s parents separately appeal the termination of parental rights pursuant to Iowa Code §232.116(1)(3). J.O. was born October 12, 1984 to D.O. and R.O. He has been placed out of his parent's care since July 1990.

In June 1988 J.O. was adjudicated a child in need of assistance and placed in a day treatment program following allegations of child abuse. He was removed from the home by an ex parte order in July 1990. He had been slapped in the mouth, scratched and his face was scarred. He demonstrated severe behavior problems.

In May 1992, the State filed a petition requesting termination of parental rights, which was granted by the juvenile court. The parents appeal separately

Because the parents continue to be married and reside together the original termination hearing was held jointly and much of the evidence supporting termination involves both parents, we consider the appeals together.

Appellate review of termination proceedings is de novo. In re W.G., 349 N.W.2d 487, 491 (Iowa 1984) cert. denied sub nom. J.G. v. Tauke, 469 U.S. 1222 (1985). We give weight to the findings of fact of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by those determinations. Id. at 491-92.

The parents challenge the sufficiency of the evidence supporting the termination and certain evidentiary rulings.

Iowa Code section 232.116(1)(e) (1991) permits the juvenile court to terminate the parent-child relationship if the court finds all of the following have occurred:

> (1) The child is four years of age or older.
> (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
> (3) The custody of the child has been transferred from the child's parents for placement pursuant to section 232.102 for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.
> (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

The State has the burden of establishing the elements by clear and convincing evidence. In re S.J., 451 N.W.2d 827, 830 (Iowa 1990). The State established with clear and convincing proof extensive evidence supporting the termination.

The Department of Human Services ("DHS"), first became involved with this family in June 1988 due to a referral of physical abuse of J.O. by his father. From June 1988 through May 1991 there were nine founded child abuse reports with J.O.'s parents as perpetrators. The abuse included spanking, slapping on mouth, scratching and scarring J.O.'s face and hitting with a stick.

During the pending of DHS involvement, both parents were admitted, at different times, to mental health units for psychiatric care. J.O.'s father was diagnosed with an adjustment disorder with depressed mood and an intermittent explosive disorder. His visitation with J.O. was suspended

when he was overheard discussing suicide with J.O. The father developed little insight and was uncooperative with counseling. J.O.'s mother was diagnosed with as major depressive disorder and a passive-aggressive personality disorder. She also has verbal IQ of 74, which is considered borderline intellectual functioning. Much concern was expressed with regard to her ability to protect her children.

Testimony also revealed J.O.'s strong fear of his father and extreme behavioral difficulties immediately preceding and following visits with his father. J.O. verbalizes concern for the safety of younger siblings and mother. J.O. also told his foster care worker his father indicated to him that if he and his younger siblings were removed from the home, the father and mother would become homeless.

The Clinic for Child Development at the University of Iowa Hospital conducted an evaluation of J.O. and his family in February 1992. The evaluation indicated J.O. had an attention deficit disorder and would require superior parenting skills. However, J.O.'s mother indicated she has increasing problems with one of J.O.'s siblings and wanted J.O. to return home to assist her in caring for his siblings. She indicated the children's father was not consistently available to assist her in parenting the children. The evaluation recommended termination of J.O. and his brother, W.O., who was also in foster care. It was

also recommended that J.O. no longer be forced to visit his father.

Shortly thereafter, the father threatened the foster care worker in J.O.'s presence. Visits were greatly decreased as J.O.'s father attended sporadically.

Throughout the pendency of DHS involvement, individual, family and in-home counseling were offered. In addition, the parents received psychiatric and psychological services at varying times. We find the record replete with DHS's attempts to assist the parents in caring for their children.

Based on this evidence, we conclude the juvenile court was correct in finding, by clear and convincing evidence, J.O. could not safely be returned to his parents' care. Although the record indicates J.O.'s mother was more cooperative than was his father, we agree with the juvenile court's finding she is unable to care for and adequately protect J.O. from abuse. Accordingly, we affirm the juvenile court's termination of parental rights.

We have reviewed the other issues raised by the father and affirm the juvenile court.

AFFIRMED.